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In The

SUPREME COURT OF THE UNITED STATES

******

October Term, 1973
No. 73-293

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CITY OF NORTH LAS VEGAS,

Petitioner,

vs.

CLARK COUNTY and SUNRISE MANOR PROTECTIVE ASSOCIATION, et al.,

Respondents.

******

On Petition for Writ of Certiorari to the Supreme Court of Nevada

******

BRIEF FOR RESPONDENTS IN OPPOSITION

******

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September 12, 1973

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OPINIONS BELOW

The unreported decision of the trial judge appears as Appendix D, page 21 of the Petition. The opinion of the Supreme Court, 89 Nev. (Adv. Opn. 2) is reported at 504 P.2d 1326, and appears as Appendix A, page 15 of the Petition; the order denying rehearing appears as Appendix B, page 19 of the Petition. Subsequent orders, that of the Chief Justice below staying the effectiveness of the order denying rehearing, and an order annulling the stay order, are reprinted in Petitioner's Supplemental Appendix as Appendices F, page 1, and G, page 2, respectively. The latest order denying a stay is reprinted as Appendix C, page 20 of the Petition.

JURISDICTION

The jurisdictional statement and that of the questions presented wholly fail to invoke the powers of the United States Supreme Court under the statute relied upon by the Petitioner, 28 U.S.C. Sec. 1257 (3).

Specifically, the untimely petition seeks review of a state court decision which does not constitute a final adjudication of the controversy, does not question the validity, constitutional or otherwise, of a state or federal statute or treaty, nor is there any title, right, privilege or immunity specially set up or claimed on the part of the Petitioner under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

The Nevada Chief Justice's order staying the "effectiveness" of the order denying rehearing did not toll the passage of time for the purpose of here seeking a writ of certiorari even if he had jurisdiction to grant it.

QUESTIONS PRESENTED

Whether or not a motion for a stay presented to a state court which does not raise any questions concerning its earlier rulings or denial of rehearing tolls the passing of the time within which to petition for a writ of certiorari; and, if so, whether inability on the part of counsel

who argued the cause before the challenged tribunal to sufficiently familarize himself with a voluminous file and innumerable citations to be studied because of other heavy judicial commitments state "extraordinary circumstances" justifying failure to seek an extension less than ten days before the expiration of the enlarged time period?

Whether one can claim surprise by a court's alleged misinterpretation of a written stipulation of facts before it so as to raise federal issues for the first time in a petition for rehearing?

Whether or not taxpayers enjoy any right to have their city gather revenues which it may argue on their behalf to here challenge a decreed ouster?

Are the states compelled to observe the doctrine of separation of powers, and if so, does a court brak the rule by construing a statute and applying it to the facts of a case at bar?

Whether the Nevada court has decided any substantial federal issue not previously determined here, or done so in any manner conflicting with this Court's applicable rulings?

CONSTITUTIONAL PROVISIONS INVOLVED

Not contending that any statutes are involved, the provisions of the Fifth, Ninth, Tenth and Fourteenth Amendments upon which North Las Vegas relies are set forth on page 5 of its Petition.

Also arguably involved are:

The United States Constitution Art. I, Sec. 10:

"No State shall * * * pass any* * * law impairing the Obligation of Contracts* * *"

The United States Constitution, Art. IV, Sec. 4:

"The United States shall guarantee to every State in this Union a Republican Form of Government. . ."

The Nevada Constitution, Art. 3, Sec. 1:

"The powers of the Government of the State of Nevada shall be divided into three separate departments, -the Legislative,- the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases herein expressly directed or permitted."

The Nevada Constitution, Art. 6 Sec. 4:

"The supreme court shall have appellate jurisdiction in all cases in equity; also in all cases at law in which is involved the title, or the right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand (exclusive of interest) or the value of the property in controversy, exceed three hundred dollars; also in all other civil cases not included in the general subdivisions of law and equity, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. The court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise

of its appellate jurisdiction...."

STATUTES INVOLVED

The Petitioner is not contending that there are any federal or state statutes having a bearing on the issues it attempts to raise. Respondents suggest that Nevada Revised Statutes (NRS) 268.574(3) footnote 2 at page 17, and 268.582 reprinted as footnote 1, at page 15, to Appendix A of the Petition, the state supreme court's decision, are involved, but since they are reproduced by the Petitioner, do not do so here.

STATEMENT OF THE CASE

The respondent property owners, hereinafter referred to as the taxpayers, to distinguish them from the co-respondent Clark County, and the unincorporated Town of Sunrise, (more commonly known as Sunrise Manor) became plaintiffs below, due to their concern over the issue or the County's standing to sue.

The correct names of the respondents, on behalf of whom this brief is submitted are: SUNRISE MANOR TOWN PROTECTIVE ASSOCIATION, a Nevada corporation, JOHN N. CATHA and MARGARET J. CATHA, DONALD L. REAMER and AMELIA G. REAMER, MONTE L. SCHLARMAN and PATRICIA SCHLARMAN, DURELLE E. BRANNON and VIVIAN G. BRANNON, JAMES E. PAGANO, JOSEPH P. DeMARCO and MIRIAM DeMARCO, WILLIAM F. FULFORD and MARY F. FULFORD.

In their separate action, filed December 15, 1969, they challenged Annexation No. 38 as void for lack of any petition describing the area to be annexed; attack-

ed Annexation No. 41, containing mostly undeveloped lands (between the former city limits) and Nellis Air Force Base, as being also void because it met none of the statutory criteria, the city planned to furnish no governmental services to the area it described as being urbanized (Nellis Air Force Base) and had been annexed contrary to the valid protests of a majority of the property owners (partially by means of the City's later "ruling" that the Base Commander's protest was invalid). Their third cause of action alleged that both annexations were under taken for the sole purpose of increasing the City's tax revenues from real and personal property taxes, utility consumer taxes, and liquor, cigarette and sales taxes which the state distributes to the incorporated cities on a per capita basis, and thus wholly void for that reason alone. The taxpayers, on behalf of themselves and all other members of the class similarly situated prayed for declaratory relief ruling the annexations invalid.

After the trial judge ruled against them and vacated the preliminary injunction, the plaintiffs below took their appeal, which was argued on December 17, 1971, and on January 10, 1973 the Nevada Court entered its per curiam ruling sustaining their contentions.

Subsequently, the court recalled its remittitur to allow the city to submit a late motion for rehearing on February 1, 1973; in which it urged that the state justices had mistaken the facts printed in the stipulation (Appendix E, at pp 27-45 of the Petition) and to its surprise, the decision that NRS 268.582 did not impliedly

grant it a power to annex on its own violation had violated the doctrine of separation of powers, the "one man-one vote" principle of the Fourteenth Amendment, would deprive it and its citizens (and those in the areas from which ousted) of tax revenues in some way contrary to the state and federal Constitutions, reduce their income from federal "revenue sharing" contrary to the United States Constitution, and by depriving North Las Vegas, its citizens and those in the territories from which it was ousted of "all the benefits and obligations" of being contained under City Hall's jurisdiction had deprived all concerned of "rights and privileges" guaranteed by the state constitution and the Fifth Amendment of the United States Constitution "without due process of law."

The state court denied rehearing on March 20, 1973. On March 23, 1973, the North Las Vegas' City Attorney, move ex parte for a stay order, which the Chief Justice granted (Supp. App. F, p.1). Because of its important relevancy to the issue of timeliness, the taxpayers have reproduced the City-Petitioner's motion and supporting affidavits as Appendix 1, at pp 22, infra.

On March 26, the taxpayers, joined by the County, filed a motion to "immediately and forthwith" vacate the stay order as having been "improvidently entered" or alternatively for an immediate hearing on the grounds that the City's motion was fatally defective for lack of points and authorities and proof of service on opposing counsel as required by that court's Rule 26, that the Nevada Court had been divested of jurisdiction on issuance of its remittitur on March 20, because no stay could issue

after rehearing was denied for lack of an appeal pending, and that the moving papers stated no cause for a stay. By telephone, the state court almost instantaneously ordered all counsel to appear before it on the morning of March 29, and after a brief hearing en banc, granted the motion. (Supp. App. G, p2)

On April 2, 1973, the taxpayers filed a motion in the trial court to compel the City, Petitioner here, to account and pay back the illegally gained tax revenues to themselves or the other local cities and for final judgment. After numerous continuances, argument has been set for September 17, 1973.

On June 22, 1973, the taxpayers' counsel's secretary was served with papers dated June 21, notifying that the City-Petitioner would here personally apply for a Stay Order on the 25th; and on June 23, (under postmark of the 22nd) received duplicates in the mail. However, upon presenting himself at the clerk's office here on Monday, taxpayers' counsel discovered that submission of the motion for a stay had been refused as untimely, but that opposing counsel had been allowed to submit an application for an extension of time to petition for a writ of certiorari. Due to the unfamilarity with motion practice here, by the time papers in opposition were prepared, an order extending time to August 17, 1973 had been entered. (United States Supreme Court No. A-1284).

Due to its possible bearing on the grounds for the issuance of tardy applications for an enlargement of time to here seek a writ of certiorari, the taxpayers

ask the Court to take notice of the papers the Petitioner filed here under its No. A-86, on July 10, 1973, and advise that the reason for the change of City Attorneys was due to the fact that, after an intensive campaign the former counsel was elected and took office as Las Vegas City Attorney on July 1, at which time the Petitioner elevated his deputy to the position.

ARGUMENT

Picking and choosing from the Stipulated Facts (App. E of Petition, pp 27-45) to select only those it thinks favorable to its contention that the challenged tribunal was guilty of erroneous interpretation that resulted in a violation of rights allegedly bestowed upon unnamed, unjoined third parties, the petitioning municipal corporatinn asks this Court to exercise jurisdiction to review and upset a state court's interpretation of state statutes dealing with a subject purely of state power, without bothering to claim that the statutes involved in any way impinge upon a recognized right of itself or the anonymous third parties or citing a single precedent for the perpetration of such violence upon the federal system.

The Nevada decision is, as a matter of the general American law of municipal corporations, as perfectly correct and irreversable as the specious petition is grossly untimely and wholly inadequate to invoke the jurisdiction of this court.

THE APPLICATION FOR AN EXTENSION OF TIME WAS INADEQUATE AND TOO LATE.

Too wearied of the repeated frenzy cause by their better financed opponent's

ex parte state and federal appellate motion practice to voice a lengthier protest, the respondent-taxpayers will only direct attention to the papers submitted for an extension of time, without either actual notice or proof of service, through what must have been some clerical oversight or mistake, for whatever it may be worth in terms of the possible applicability of Rule 50 (2)a, and address their discussion to the jurisdictional, and other merits, of which none are apparent.

According to our calculations, the petitioner's application for additional time, submitted here on June 23, 1973, was then five days too late.

Assuming for the sake of argument, that the stay granted by Chief Justice Thompson had operated to toll the passage of time, the reasons given, a voluminous file "with extensive legal briefs with innumerable citations to be studied" by counsel too busy with "heavy judicial commitments" to get acquainted with a case which he argued to the questioned court and later submitted to it a 19 page brief for rehearing, are altogether too common to the type of controversies reviewed here to justify failure to so apply in less than ten days before the expiration of a purportedly enlarged period of time, unless the emasculation of the "extraordinary circumstances" requirement of Rule 34(2) is a desirable goal. If a case is important enough to merit notice here, the advocate owes a minimum duty to at least check the rules and count pages on his busy calender; and at least one member, the late Justice Frankfurter, was of the view that he has an affirmative duty to timely prepare

if he desires to bring it here. Carter v. United States, 100 L. Ed. 1508, 1509, 75 S. Ct. 911 (1955).

The responding taxpayers emphatically deny that the time was enlarged. The reasons given for "staying the effectiveness of the order denying rehearing" by the defeated city, set forth in the Appendix (1, pp 22-25 infra) did not in any way involve a question as to any point decided either in the original opinion or on the motion for rehearing. Therefore, even if the questioned court had not unanimously sustained the strong objections of the taxpayers, joined by the County, and "annulled" the stay order on March 29, 1973, the stay had no effect on the passage of jurisdictionally vital time. Department of Banking v. Pink, 317 U.S. 264 266-267 (1942).

THE MATTER HAS NOT BEEN FINALLY ADJUDICATED

The per curiam opinion of the state court used the single word "reversed". Under Nevada case law, the effect is to place the parties back before the trial court in the same position they were in immediately prior to the decision overturned on appeal. Guisti v. Guisti, 44 Nev. 437, 196 Pac. 337 (1921); Canepa v. Durham, 63 Nev. 245, 166 P.2d 810 (1946).

Presently pending there is the plaintiff taxpayers' motion, filed April 2, 1973, to force a return and/or redistribution to "all others similarly situated" and the other affected local cities of the taxes and revenues unlawfully received by the

defendant petitioning here, and a· final declaration of rights and judgment upon the remittitur. After a number of lengthy continuances granted the defendant city, the trial judge who must straighten out the mess created by his predecessor's decision has calendered argument to begin on September 17, 1973. The matter is sufficiently complicated, and so many private and public entities involved, that the prospect of further appellate proceedings is not nearly as remote as the plaintiffs' wish.

It is not interlocutory, but final, adjudications to which this Court must devote its time under the statute relied upon by the petitioner to invoke its powers, even though the major issues have been decided and all that remains is to determine damages. Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62 (1948)

NO WRONGLY DECIDED OR UNANSWERED FEDERAL QUESTION IS POSED

The petition is so frivolous as to verge on the bizarre.

These questions it asks: does a state court, repetitively through erroneous interpretation of written facts, in "miscontruing" a statute so violate the doctrine of separation of powers as to infringe the rights or powers reserved by the Ninth and Tenth Amendments to the people; by reducing a city's size, deprive its citizens and those from where it is ousted, of revenues and the right to vote in its elections, so unfairly and unlawfully as to be tantamount to denying them equal protection under the Fourteenth Amendment,

and the rights and privileges guaranteed by the Fifth Amendment?

To all these interrogatories, the decisions of this Court, as well as virtually all of the states, have already answered with a resounding No.

The Ninth Amendment on its face, is totally inapplicable to the petitioner's case, since it does no more than specify a rule of strict construction of the United States Constitution against federal powers and in favor of themselves, and does not apply to the states. The Tenth Amendment provides that powers not granted the United States, nor prohibited by the Constitution to the States, are fully retained by either the states or their citizens-and fully recognized the historic principal, much older than that document, that the states are governments endowed with all the powers any government can have, except as limited by either their own or the federal constitutions.

In Article 3 of the Nevada constitution, the document by which the people, the source of all the powers of such a fiction as is that, or any state, exerted their sovereignty, they adopted the doctrine of separation of powers.

In Article 6, the Nevadans vested "The Judicial power of this State" in a system of courts, and in Sec. 4 vested full appellate, and quite a bit of original, jurisdiction, in their supreme court. That statewide elected body, when it sits, exercises the power of all the people, the same people who in smaller numbers elect state senators and assemblymen from smaller areas.

The answer to the proposition that in exercising its power to decide a specific case before it a court which construes a statute in a manner the losing litigant alleges to be erroneous, thereby violates the doctrine of separation of powers is necessarily as simplistic and trite as the question. How can any court decide a controversy in which the defeated appellee bases its entire case upon its interpretation of a specific statutory section without having the power to construe the statute in its favor, or misconstrue it against it?

The point is academic here. The doctrime of separated legislative, judicial and executive powers is not an essential element of a republican form of government or of the limitations on the states contained in the Fourteenth Amendment, and their courts may mischievously misconstrue their own statutes without federal intervention. Dreyer v. Illinois, 187 U.S. 71, 83-84 (1902). This Court will not correct a state court's misconstruction of a local municipal annexation law to preserve the state legislature's plenary powers over municipal corporations and other political subdivisions from its judiciary even on the complaints of a human property owner that it must do so to preserve a republican form of government. Forsyth v. Hammond, 166 U.S. 506, 518-519 (1897).

If real voters were here petitioning on behalf of themselves and all other "Negroes similarly situated", that a state legislature had nonsenically redrawn a city's limits for the purpose of denying them their Fifteenth Amendment rights, they would be attentively heard, but barring

such a travesty, the power of the state legislatures and courts over their lesser political bodies is well nigh absolutely total. Gomillion v. Lightfoot, 364 U.S. 339 (1960).

Smaller political entities can not be heard to plead alleged rights of its voters, especially not as a limitation on higher state authority, so as to retain them within local boundaries, for to allow it would be to slowly commit "sovereigntial suicide" by creating "states within the state". Pershing County v. Humboldt County, 43 Nev. 78, 871-88, 181 Pac. 960, 962, reh. den. 183 Pac. 314 (1919).

To the "innumerable" rulings that only the injured parties may complain of the violation of constitutional, or other, rights no special exception is granted to cities to allow them to urge the rights of their taxpayers to have them receive revenues. Hunter v. Pittsburgh, 207 U.S. 161, 178-179 (1907). Nor will a group of its taxpayers actually present before the Court be heard to argue that their city has a "right" to income protectable here. New Orleans v. New Orleans Waterworks Co., 147 U.S. 79 (1891).

The Court will not yield in its deference to local law on a city's contention that diminution of its income by passage of a law has impaired its contractual obligations. Pawhuska v. Pawhuska Oil & Gas Co., 250 U.S. 394 (1919)

Municipal corporations have no constitutional "right to revenue" for the courts to protect. State ex rel Adams v. Crawford, 99 Conn. 378, 121 Atl. 800 (1923); Re Heineman, 201 Wis. 484, 230 N.W. 698 (1930).

Forty years ago this Court had before it a hotly contested case, brilliantly argued by able advocates, wherein a municipality complained of a recently enacted law exempting a commuter railroad from its taxation as impairing, not only the obligation of its contracts, but every other right conceivable or claimable, and in a decision written by Justice Benjamin Cardozo held that there was no right, title, interest, immunity or privilege held or enjoyed by cities under the Federal Constitution which the Court would protect from the states. Williams v. Baltimore, 289 U.S. 38, 40 (1933).

A few years later, taxpayers brought here for review a federal decision in favor of municipal bond creditors compelling them to continue paying taxes to an ousted city on the theory that the municipality had exercised "de facto" jurisdiction over their noncontigous lands in which they had earlier acquiesced without protests, of taxes or otherwise, and thus were estopped. This Court, first stating that it was unquestionably bound to apply the local law gleaned from Florida statutes or decisions, rigidly adhered to the state cases, discovered that under them there could be no de jure annexation of noncontiguous lands under the statutes, and finding the annexation void, held that no amount of taxpayer consent could substitute for a statutory grant of power and reversed. Ocean Beach Heights, Inc. v. Brown-Crummer Invest. Co., 302 U.S. 614 (1938).

Probably no better illustration of how extremely well settled the point is can be cited than the case of Smith v. City of

Winter Haven, 18 So.2d 4 (Fla. 1944) in which, although a federal judgment compelled the city to continue taxing a non-contiguous black neighborhood from which the state court had ousted it, the court reversed the trial judge's denial of an injunction, all but thumbing its nose at the Fifth Circuit Court of Appeals.

The power of the states over their political offspring is so pervasive that where found to be in accordance with Kentucky law by the state court, this Court could find no Constitutional point upon which to disturb the decision sustaining Louisville's annexation of a Naval Ordnance installation. Howard v. Commissioners, 344 U.S. 624 (1953). See also Wichita Falls v. Bowen, 143 Tex. 45, 182 S.W.2d 695 (1944) (Sheppard Field); County of Norfolk v. City of Portsmouth, 186 Va. 1032, 45 S.E.2d 136 (1947) (Norfolk Navy Yard).

But, when a city of less than 4,000 decided to boost its population by 12,000 so as to obtain a larger share of tax revenues distributed on a per capita basis by means of annexing SAC headquarters and the major part of the free world's nuclear deferrent at Offut Air Force Base, in a state where the local court had four times earlier ruled annexations for revenue purposes only "invalid" a federal injunction may issue. United States v. City of Bellevue, Nebraska, 334 F. Supp. 881 (D.C. Neb. 1971); aff'd 474 F.2d 473 (8th Cir. 1973); petition for cert. filed (U.S. May 26, 1973, No. 72-1591).

Such municipal imperialism is also "invalid" in Nevada, because the effect of annexation for taxation is to deprive

property owners of their property without due process of law and thus it is unconstitutional and void. State ex rel Bibb v. City of Reno, 64 Nev. 127, 118 P.2d 366 (1947).

An essential element of due process clauses, in whatever constitution found, being proper notice to those having rights to be affected, it is not startling that the statutory requisites of property owner petitions for annexation are universally deemed to be jurisdictionally imperative, and the right of protest (even of the United States Air Force) "jealously guarded". States ex rel Quimby v. City of Reno, 71 Nev. 144, 156-157, 282 P.2d 1071, 1077 (1955).

One surprised by an unanticipated appellate decision suddenly impairing important federally protected rights might properly raise the issues for the first time in a petition for rehearing-but to the contention that "misinterpretation of facts" stipulated was a thought that never should have earlier crossed the municipal mind the respondent taxpayers suggest that a casual reading of all the stipulated facts with eyes unblinded by greed will indicate that the state justices gave the case as correct a construction in fact as they did in law, after they finally reached agreement as to just which of the "Numerous errors" to correct. (App. E of Petition, pp. 27-45)

Assuming, but in no way conceding, that the state court did "misinterpret" the written facts, nevertheless, its decision on even erroneously found facts of a case involving points of local municipal law

is not reviewable here, and its word is final. Williams v. Weaver, 100 U.S. 547 (1880).

The respondent taxpayers have no more quarrel with the principle that a court decision amounts to state action within the meaning of the Fourteenth Amendment quoted by the petitioner from 16 Am.Jur.2d, than they do with the ruling in Monaco v. Mississippi, 292 U.S. 313 (1934) that the Eleventh Amendment prevents federal courts from entertaining actions brought by foreign principalities against states. But the protection of the Fourteenth Amendment is extended only to human beings and the private corporations in which they have property interests, and since the petitioner city did not produce in evidence before the trial or appellate court either its certificate of birth or naturalization, the co-equal judicial branch of its parental state government had every right to commit infanticide, devouring its offspring even without due process or equal protection of the laws.

It suggests that a judicial decision ousting it for wholly failing to comply with the law, in its haste to fatten its coffers, upon the protest of those intended to suffer the extortion, by granting its victims the relief sought, because it excludes them from voting in its elections, has effected a political reapportionment contrary to the "one man-one vote" principle. The contention isn't worthy of an answer, but respondent-taxpayers who fought on behalf of themselves and "all others similarly situated" suggest that to recognize such an exception in the law of municipal annex-

ations is to wholly destroy it, and lead to the establishment of "mini-sovereigns" within sovereigns. Pershing County v. Humboldt County, supra. Free people are feee to move to whatever city they find distasteful. Secondarily, the effect of the ouster is not to diminish the strength of voters remaining within the city, but to add weight to their ballots.

CONCLUSION

In its grossly untimely petition, far too late to invoke the jurisdiction of this Court to review a case at an intermediate stage, the City of North Las Vegas', as brazenly here as below, would have this highest Court first do violence to the federal system in order to then do violence to virtually the entire body of law pertaining to municipal corporations as well as its own well settled "innumerable citations", all in the name of protecting a wholly nonexistent" right to revenue."

The petition doesn't even bother to question the validity of any state, or the arguable applicability of any federal, statute and wholly fails to show the infringement of any "title, right, privilege or immunity" set up or claimable under federal law, Constitutional or otherwise, on behalf of itself or the annonymous third parties it contends should have it kept in

style to which it would like to be accustomed.

Certiorari must be denied.

Respectfully submitted,

HARRY J. MANGRUM, JR.
Attorney for Respondents
SUNRISE MANOR TOWN PROTECTIVE ASSOCIATION, JOHN N. CATHA, et al.

September 12, 1973

APPENDIX I

(SUPREME COURT - STATE OF NEVADA)
(No. 6584)

(MOTION TO STAY DATE OF ORDER DENYING REHEARING ON PETITION)

(Filed March 23, 1973)

COMES NOW, Respondent-Petitioner, CITY of NORTH LAS VEGAS, and moves this Honorable Court, pursuant to Supreme Court Rules 34 (4), (5) and (7) and 26, to stay the effectiveness of the order in the above referred to matter denying a re-hearing..the Remittitur of the same having been mailed by the Clerk of the Supreme Court to the Clerk of the Eighth Judicial District Court on or about the 21st day of March, 1973, in order that a convenient coordination and transition of municipal jurisdiction and the exercise thereof may occur insofar as the subject matter of this case is concerned.

This motion is based on the Affidavits filed herewith and on the necessity for such time in which to properly achieve such transition.

DATED this ___ day of March,1973.

CARL E. LOVELL, JR.
City Attorney

/s/ Carl E. Lovell, Jr.
Attorney for Respondent-Petitioner

APPENDIX I

(SUPREME COURT - STATE OF NEVADA)

(No. 6584)

(AFFIDAVIT)

(Filed March 23, 1973)

STATE OF NEVADA)
COUNTY OF CLARK) ss:

IRENE PORTER, being first duly sworn, deposes and says:

That she is the duly appointed Planning Director of the City of North Las Vegas, Nevada, and in such capacity is responsible for the planning, applications for use permits, variances, zoning changes and reviews all applications for business licenses in order that they meet with Planning requirements for the City of North Las Vegas;

That due to the number of businesses and applications for permits, variances, and zoning changes, it would take at least thirty (30) days in which to properly, orderly and conveniently work with the Planning Director of Clark County, Mr. Jay Downey, in order to make the transition of all those licenses, records and applications which have come about in the last twenty-seven (27) months, in order to insure an orderly continuance of government and a system of Planning management.

That therefore, your Affiant feels the necessity that thirty (30) days or as

much time as allowable to make such changes and transition is in the best interests of orderly and sound government.

DATED this 22nd day of March, 1973.

/s/ Irene Porter

IRENE PORTER, Planning Director, City of North Las Vegas, Nevada

SUBSCRIBED and SWORN TO before me this 22nd day of March, 1973.

/s/ JEAN TRUEX

NOTARY PUBLIC

(S E A L)

APPENDIX I

(SUPREME COURT - STATE OF NEVADA)

(No. 6584)

(AFFIDAVIT)

(Filed March 23, 1973)

STATE OF NEVADA)
COUNTY OF CLARK) ss:

ROLAND S. TATE, being first duly sworn deposes and says:

That he is the Superintendent of the Building Department of the City of North Las Vegas, and that as a result of the Order Denying the Rehearing on Petition in the above matter, in order to make proper transfer of records and license applications, for which he is responsible for the City of North Las Vegas, to the Building Department of Clark County, a period of time would be necessary in order to avoid confusion and utter disruption of both his record department and that of Clark County, and that therefore, your Affiant would appreciate a sufficient amount of time in which to be able to make such transfer of records for the convenience of both public entities and the public.

DATED this 22nd day of March, 1973.

/s/ Roland S. Tate

ROLAND S. TATE
Superintendent of Building
City of North Las Vegas, Nevada

SUBSCRIBED and SWORN TO before me
this 22nd day of March, 1973.

/s/ JEAN TRUEX (S E A L)
NOTARY PUBLIC

PROOF OF SERVICE

STATE OF NEVADA)
COUNTY OF CLARK) ss:

HARRY J. MANGRUM, JR., being duly sworn, deposes and says:

That on the ____ day of September, 1973, I mailed three (3) copies of the foregoing Brief in Opposition to Writ of Certiorari to:

William S. Barker
514 South Third Street
Las Vegas, Nevada 89101
Counsel for Petitioner

Roy A. Woofter
District Attorney
Attn: Charles L. Garner
Chief Deputy of Appeals
Clark County Courthouse
200 East Carson Avenue
Las Vegas, Nevada 89101

Further, that postage was fully prepaid, and that there is regular communication by the United States Mails between the place of posting and the place so addressed.

_____

HARRY J. MANGRUM, JR.

SUBSCRIBED and SWORN to before me this ____ day of September, 1973.

_____

NOTARY PUBLIC